

7535-01-U

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 716

Privacy of Consumer Financial Information

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The NCUA Board is issuing a final rule to amend the requirements for privacy and opt out notice where there is a joint relationship on a loan. The amendment provides that a credit union is required to provide a separate initial notice and a separate opt out notice to each borrower and guarantor only if the credit union actually shares their nonpublic personal information with nonaffiliated third parties outside of one of the permissible exceptions. This amendment does not affect the right of borrowers and guarantors to receive notices if they are otherwise entitled to receive them as members of the credit union.

EFFECTIVE DATE: This rule is effective November 13, 2000. However, compliance is

not required until July 1, 2001.

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ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp or Regina M. Metz, Staff Attorneys, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518-6540.

SUPPLEMENTARY INFORMATION:

Background

On February 24, 2000, the NCUA Board issued a proposed rule and, on May 8, 2000, a final rule applicable to all federally-insured credit unions, as required by the Gramm-Leach-Bliley Act (GLB Act). 65 FR 10988 (March 1, 2000) and 65 FR 31722 (May 18, 2000). The Board received 99 comments on its proposal. The final rule required credit unions to have a privacy policy and provide certain disclosures and notices to individuals about whom credit unions collect nonpublic personal information. In drafting the rule, the NCUA participated as part of an interagency group composed of representatives from the NCUA, the Federal Trade Commission, the Office of Comptroller of the Currency, Board of Governors of the Federal Reserve System, Secretary of the Treasury, and Securities and Exchange Commission (collectively, the Agencies). The final rule took into account the unique circumstances of federally-

insured credit unions and their members but, as required by the GLB Act, was consistent and comparable with the regulations of the other Agencies.

The other Agencies' final regulations, which were issued after the NCUA, permit a financial institution to provide a single initial notice and opt out notice if two or more consumers jointly obtain a financial product or service. Unlike the other Agencies, NCUA's rule specifically excluded from the provisions governing joint relationships, the authority to provide only one notice in the case of a loan. 65 FR at 31743, 31745. The Board's rationale for the exclusion was that "co-makers and guarantors should receive the notice and right to opt out because of the extent and nature of nonpublic personal information provided to the credit union in conjunction with these types of transactions." 65 FR at 31728. Upon further reflection, the Board is persuaded by the 50 commenters that objected to requiring separate notices for **all** joint account holders. The commenters noted that the administrative and financial burden of tracking down joint account holders is substantial and that one notice is consistent with other consumer loan regulations. The Board believes that to accomplish its goal of protecting borrowers and guarantors from the sharing of their nonpublic personal information, notice to **all** borrowers and guarantors is not necessary and has amended its rule to require notices only under limited circumstances. The Board is amending the rule to provide that a credit union must only provide separate notices to individuals, other than the primary borrower, if a credit union is actually sharing nonpublic personal information about them.

Final Amendment

Sections 716.4(f)(2) and 716.7(d)(6) of this amendment only require a credit union to provide a separate initial notices and opt out notice to all borrowers and guarantors if the credit union shares their nonpublic personal information with nonaffiliated third parties other than for purposes permitted under §§716.13, 716.14 and 716.15. In addition, no annual notices are required.

This amendment does not affect the notice requirements for existing members in §716.4(d) or the duty in §§716.4, 716.5 and 716.7 to provide initial, annual and opt out notices to co-borrowers and guarantors who have a member relationship with the credit union, in addition to a co-borrower or guarantor relationship. Finally, this provision does not affect the right of a co-borrower or guarantor to opt out as permitted for other types of joint relationships.

This provision is effective November 13, 2000, and compliance is mandatory July 1, 2001. This means that, like the recently passed final rule, all notices required by this amendment must be mailed by July 1, 2001. 65 FR at 31749.

The Board is issuing this rule as a final rule because it decreases the regulatory burden and there is a strong public interest in having a final privacy rule in place that allows federally-insured credit unions ample time to comply. Accordingly, and for good cause,

because the rule decreases the regulatory burden, pursuant to 5 U.S.C. 553(b)(3)(B), notice and public procedures are impracticable, unnecessary, and contrary to the public interest.

Regulatory Procedures

A. Paperwork Reduction Act

The final rule does not impose any additional paperwork requirements on federally-insured credit unions.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires, subject to certain exceptions, that NCUA prepare an initial regulatory flexibility analysis (IRFA) with a proposed rule and a final regulatory flexibility analysis (FRFA) with a final rule, unless NCUA certifies that the rule will not have a significant economic impact on a substantial number of small credit unions. For purposes of the Regulatory Flexibility Act, and in accordance with NCUA's authority under 5 U.S.C. 601(4), NCUA has determined that small credit unions are those with less than one million dollars in assets. See 12 CFR §791.8(a). NCUA's final rule will apply to approximately 1,626 small credit unions, out of a total of approximately 10,627 federally-insured credit unions.

The NCUA Board has determined and certifies that the final rule will not have a

significant economic impact on a substantial number of small credit union. The reason for this determination is that the final rule decreases the regulatory burden for all federally-insured credit union. This will result in reduced costs for all federally-insured credit unions.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This final rule will apply to all federally-insured credit unions, but it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Section 507 of the GLB Act states that state law may provide greater consumer protections than this proposed rule. In that event, federal law would not preempt state law. NCUA has determined the final rule does not constitute a policy that has federalism implications for purposes of the executive order.

D. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the

Administrative Procedures Act. 5 U.S.C. 551. NCUA has recommended to The Office of Management and Budget that it determine that this is not a major rule, and is awaiting its determination.

E. The Treasury and General Government Appropriations Act, 1999 - -

Assessment of Federal Regulations and Policies on Families

NCUA has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105-277, 112 Stat. 2681 (1998).

Agency Regulatory Goal

NCUA's goal is clear, understandable regulations that impose minimal regulatory burden. This rule reduces a requirement for federally-insured credit unions and so it meets the agency's goal of reducing regulatory burden.

List of Subjects in 12 CFR part 716

Consumer protection, Credit unions, Privacy, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on June 5, 2000.

Becky Baker

Secretary of the Board

For the reasons set out in the preamble, NCUA amends 12 CFR part 716 as follows:

PART 716—PRIVACY OF CONSUMER FINANCIAL INFORMATION

1. The authority citation for part 716 continues to read as follows:

Authority: 15 U.S.C. 6801 et seq., 12 U.S.C. 1751 et seq.

2. Amend §716.4 by redesignating paragraph (f) as paragraph (f)(1) and adding paragraph (f)(2) to read as follows:

§716.4 Initial privacy notice to consumers required.

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(f)(1) * * *

(2) Special rule for loans. (i) You are required to provide an initial notice to a borrower or guarantor on a loan if you share his or her nonpublic personal information with nonaffiliated third parties other than for purposes under §§716.13, 716.14 and 716.15.

(ii) You may satisfy the annual notice requirements of §716.5 by providing one notice to those borrowers and guarantors jointly.

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3. Amend §716.7 by adding paragraph (d)(6) to read as follows:

§716.7 Form of opt out notice to consumers and opt out methods.

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(d) * * *

(6) Special rule for loans. (i) You are required to provide an initial opt out notice to a borrower or guarantor on a loan if you share his or her nonpublic personal information with nonaffiliated third parties other than for purposes under §§716.13, 716.14 and 716.15.

(ii) You may satisfy your annual opt out notice requirement by providing one notice to those borrowers and guarantors jointly.

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